

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Aug 11, 2011, 4:17 pm
BY RONALD R. CARPENTER
CLERK

NO. 84916-1

RECEIVED BY E-MAIL

THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
AUG 11 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

IN RE: DEPENDENCY OF J.H.

STATE OF WASHINGTON,

Respondent,

v.

GREGORY HYDE,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

NANCY P. COLLINS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

ORIGINAL

TABLE OF CONTENTS

A. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED	1
B. STATEMENT OF THE CASE	1
C. ARGUMENT	6
HYDE PROPERLY APPEALED FROM THE COURT'S ORDER DISMISSING THE DEPENDENCY THAT PROTECTED HIS SON	6
1. A parent's fundamental rights and interests are at stake in a dependency proceeding	6
2. An aggrieved party has standing to challenge a trial court's judgment on appeal	8
D. CONCLUSION	14

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

<u>In re Dependency of J.W.H.</u> , 147 Wn.2d 687, 701, 57 P.3d 26 (2002)	9, 10, 13
<u>In re Dependency of K.N.J.</u> , 171 Wn.2d 568, __ P.3d __, 2011 WL 2076495 (2011)	6, 10, 12, 13
<u>In re Dependency of Schermer</u> , 161 Wn.2d 927, 169 P.3d 452 (2007)	9, 10, 13
<u>State v. Taylor</u> , 150 Wn.2d 599, 80 P.3d 605 (2003)	4, 11

Washington Court of Appeals Decisions

<u>In re Dependency of Ramquist</u> , 52 Wn.App. 854, 765 P.2d 30 (1988), <u>rev. denied</u> , 112 Wn.2d 1006 (1989)	8
<u>In re Skinner</u> , 97 Wn.App. 108, 982 P.2d 670 (1999)	7
<u>In re Welfare of Hansen</u> , 24 Wn.App. 27, 599 P.2d 1304 (1979) ..	8, 10
<u>Polygon Northwest Co. v. American National Fire Insurance Co.</u> , 143 Wn.App. 753, 189 P.3d 777 (2008)	4, 11, 12
<u>State v. G.A.H.</u> , 133 Wn.App. 567, 137 P.3d 66 (2006)	8, 12

United States Supreme Court Decisions

<u>Lassiter v. Department of Social Serv.</u> , 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981)	7
<u>Santosky v. Kramer</u> , 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)	6

<u>Stanley v. Illinois</u> , 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)	7
--	---

United States Constitution

Fourteenth Amendment	6
----------------------------	---

Statutes

RCW 13.34.030	2
RCW 13.34.110	7

Court Rules

RAP 1.2	8
RAP 3.1	8

A. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED.

When a child's welfare is substantially at risk, any person may file a dependency petition seeking court intervention to protect the child. A parent is a necessary party to a dependency because a parent has a fundamental liberty interest in the care, custody, and management of his or her child. The trial court found J.H. dependent due to his mother's on-going drug abuse problems and his father Gregory Hyde's unavailability to parent J.H., but it dismissed the dependency shortly thereafter. Hyde objected to the court's dismissal of the dependency order because he believed his child's best interests required the continuing dependency and contended that the court misapplied the law when dismissing the order. When a parent believes that an order dismissing a dependency places his child's safety substantially at risk, does the parent have standing to appeal?

B. STATEMENT OF THE CASE.

After J.H.'s mother, Jennifer Ludwig, and her husband, George Brown, were arrested for "dealing cocaine and having weapons in their possession," the State filed a dependency petition on November 13, 2008. CP 2. J.H. was five years old, and he temporarily moved into his grandmother's home. CP 1, 3.

J.H.'s grandmother had cared for Ludwig's older son for seven years while Ludwig was incarcerated for drug-related crimes. CP 3.

J.H.'s father, Gregory Hyde, was unable to care for J.H. because he was incarcerated. CP 81. The court forbade him from directly contacting J.H. CP 211. Notwithstanding Hyde's unavailability, Hyde remained concerned about his son's welfare. CP 209-11. Hyde was a named party to the dependency action and was represented by counsel in the trial court proceedings. CP 2.

The court entered an agreed order finding J.H. dependent. CP 43. The dependency was entered pursuant to RCW 13.34.030(5)(c), which provides that no parent is "capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development." CP 44, 81.

The court returned J.H. to live with his mother during the dependency. CP 44; CP 198. Shortly thereafter, J.H.'s mother tested positive for cocaine, morphine, and codeine on different occasions. CP 199. She had not complied with the court's orders that she start drug treatment or ensure that Brown stay away from

the family home. CP 44-45; CP 198-200. The State asked to remove J.H. from the mother's home, complaining that it could not "adequately protect [J.H.] and ensure his well-being" while he remained in his mother's care. CP 200. Hyde concurred. CP 209-11.

The judge ruled that the mother's behavior "causes me concern" but denied the request to remove J.H. from his mother's home, finding no "nexus" showing harm to the child from her drug use or contact with Brown. CP 318 (Finding of Fact J); CP 352. Hyde filed a motion to revise, which the State supported, but it was denied. CP 428-29. Hyde filed a notice of appeal of this order, COA 28127-2-III, which is one of the cases consolidated herein. CP 440-46.

Shortly after the court refused to remove J.H. from his mother's home, the court ruled that "as long as the mother continued to comply with treatment," and did not test positive for controlled substances in the next few weeks, it would dismiss the dependency at the end of the month. CP 493. Despite the objections of the State and Hyde, the court dismissed the dependency as promised. CP 532-38; CP 603-04. The court struck all future review hearings and dismissed the dependency.

CP 603-04. J.H. returned to his mother's care and custody without any court oversight, over Hyde's objection and contrary to the State's request. Id.

Hyde filed a notice of appeal, COA 28416-6-III, which was consolidated with the pending appeal from the order refusing to remove J.H. from his mother's home, COA 28127-2-III. Immediately thereafter, the Court of Appeals solicited briefing on whether Hyde had standing to appeal the dismissal of a dependency. See Court of Appeals Order dated August 4, 2009. The State argued that Hyde was not an aggrieved party because the court's order ending state intervention in his child's life was a benefit to him as a parent, rather than a burden.

The Court of Appeals agreed. It ruled that Hyde lacked standing to appeal the trial court's orders ending the dependency of his biological child because he was not an aggrieved party. Commissioner Decision, at 1-2 (attached as Appendix A). The Commissioner ruled that Hyde:

has failed to show he has a pecuniary interest affected by the trial court's decision dismissing the dependency as to the child's mother, State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003), or that the trial court entered a judgment that substantially affected a legally protected interest of his, Polygon Northwest Co. v. American National Fire Insurance

Co., 143 Wn.App. 753, 768, 189 P.3d 777 (2008);
and now, therefore,
IT IS ORDERED, since Mr. Hyde is not an aggrieved
party these matters are dismissed.

Commissioner Decision, at 1-2. The Court of Appeals denied
Hyde's motion to modify without comment.

After this Court granted Hyde's motion for discretionary
review, the State reversed its position that Hyde lacked standing to
appeal from the dismissal of the dependency entered against the
child's mother. The State filed a motion "agree[ing] that Mr. Hyde
is an aggrieved party and as such is entitled to appeal on the
merits of the matters consolidated herein."¹

¹ The State's motion conceding Hyde's standing to appeal asked that
the case be remanded to the Court of Appeals for the appeal to proceed on its
merits. This Court declined the State's request to remand the case to the Court
of Appeals.

C. ARGUMENT.

HYDE PROPERLY APPEALED FROM THE
COURT'S ORDER DISMISSING THE
DEPENDENCY THAT PROTECTED HIS SON

1. A parent's fundamental rights and interests are at stake in a dependency proceeding. A parent's legal interest in his or her child's welfare has long been protected. In re Dependency of K.N.J., 171 Wn.2d 568, __ P.3d __, 2011 WL 2076495, *2-3 (2011) (describing parental rights as "fundamental civil right which may not be interfered with without the complete protection of due process safeguards" and tracing history of dependency laws in Washington); see Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (parental rights are fundamental liberty interest protected by the United States Constitution); U.S. Const. amend. 14. "The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Santosky, 455 U.S. at 753.

A parent retains a "commanding" and "vital interest" in the care of his child "even when blood relationships are strained." Id. at 753, 759. The natural parent's "desire for and right to the

companionship, care, custody, and management of his or her children is an interest far more precious than any property right." Id. at 758-59 (quoting *inter alia* Lassiter v. Department of Social Serv., 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981) and Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)).

A child's legal parents are necessarily parties to an action involving State intervention in the child's care or custody. RCW 13.34.110(1) grants a child's parent, guardian, and legal custodian the right to participate in all stages of proceedings at which a child is alleged to be dependent. The right to participate in a dependency action, or express a legally cognizable interest in one's own child's care, does not evaporate simply because the parent is incarcerated. In re Skinner, 97 Wn.App. 108, 120, 982 P.2d 670 (1999). Although Hyde was incarcerated during the dependency proceeding, his parental rights did not lapse. He participated in the dependency proceeding as J.H.'s father and his interest in his child's welfare remains his legal duty and fundamental concern. CP 211.

2. An aggrieved party has standing to challenge a trial court's judgment on appeal. A party has standing to appeal when "aggrieved." RAP 3.1.² The Rules of Appellate Procedure are "liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a).

In dependency proceedings, the Legislature intended a "policy of liberal standing." In re Dependency of Ramquist, 52 Wn.App. 854, 857, 765 P.2d 30 (1988), rev. denied, 112 Wn.2d 1006 (1989). This liberal standing serves the Legislature's goal of providing "maximum protection" for children in dependency proceedings. Id.

An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected. State v. G.A.H., 133 Wn.App. 567, 575, 137 P.3d 66 (2006). A child's recently-terminated guardian is an aggrieved party who may appeal a dependency order because his or her right to "a valuable human relationship" is affected by a dependency order. In re Welfare of Hansen, 24 Wn.App. 27, 35, 599 P.2d 1304 (1979).

² RAP 3.1 provides, "Only an aggrieved party may seek review by the appellate court."

A parent need not be opposed to the dependency to have an interest in its outcome and standing to pursue a dependency. In re Dependency of Schermer, 161 Wn.2d 927, 941-42, 169 P.3d 452 (2007). In Schermer, the child's parents sought a dependency because they wanted the State to not only intervene in their child's custody, but to take custody of him for his own well-being. Id. at 934. Due to their child's mental health problems and their own financial limitations, the parents were unable to adequately care for their son or keep him safe in the home. Id. at 935. The trial court rejected the parent's dependency petition. Id. at 937. This Court reversed that order, and held that parents may file a dependency petition in which they assert their interest in seeing the State intervene in the family to protect their child's welfare. Id. at 941-42.

In In re Dependency of J.W.H., 147 Wn.2d 687, 696, 701, 57 P.3d 26 (2002), temporary custodians of two children appealed a dependency order because it was directed toward reunifying the parents with their child and the custodians believed this reunification posed a danger to the child. This Court held that the custodians had a legal interest in the children's care and welfare and were entitled to participate in the dependency proceedings,

which included the right to appeal. Id. at 700-01. It rejected the State's claim that parties to a dependency must either advocate for a child's reunification with his parent or be silent, as "a notion we cannot accept." Id. at 701.

Similarly, in Hansen, a couple who had been long-term legal guardians appealed after the trial court ruled that they could not be parties to a dependency action intended to reunify the child with her biological mother. 24 Wn.App. at 30. The Court of Appeals disagreed, ruling that the guardians had standing to contest the dependency because the guardians had a "valuable relationship" with the child. Id. at 35.

The Schermer Court explained that the legal standard to establish a dependency is relatively lenient. 161 Wn.2d at 942. Dependencies serve the important function of allowing state intervention in order to remedy family problems and provide needed services. Id. Parental deficiency is not a prerequisite. Id. at 943.

Like the parents in Schermer, or the legal custodians in J.W.H. and Hansen, Hyde has a fundamental interest in the safety, care, and welfare of his child. See K.N.J., 2011 WL 2076495 at *2. The trial court's order dismissing the dependency

ended State oversight of J.H.'s welfare, even though the mother had been recently using drugs while J.H. was in her custody and the State did not believe she was capable of protecting J.H.'s safety. CP 199-200. Hyde believed the circumstances warranted oversight and intervention. CP 209-11. He contended that the trial court applied the wrong legal standard when determining the need for state intervention and oversight of J.H.'s care. CP 357-59.

The Court of Appeals Commissioner ruled that Hyde lacked standing to appeal the court's order dismissing the dependency against J.H.'s mother based on two cases regarding aggrieved parties that have little application in the context of dependencies, Taylor, 150 Wn.2d at 603 and Polygon, 143 Wn.App. at 768.

In Taylor, the appellant was not an aggrieved party because a criminal charge against him had been dismissed without prejudice. 150 Wn.2d at 603. While the appellant may have preferred a dismissal with prejudice, as it would bar the State from refiling the prosecution, there was no pending cause of action against him and thus, no legal relief the court could provide. Id. Unlike Taylor, Hyde has an on-going, fundamental interest in his

child's welfare for which the court could provide relief if it continued the dependency proceeding.

Polygon involved insurance claims where the trial court had not entered any orders that affected the appealing party's rights. 143 Wn.App. at 768. Polygon recognized there are some situations where a party may appeal because the order "directly impacts that person's legally protected interests." 143 Wn.App. at 768-69. As an example, it cited State v. G.A.H., 133 Wn.App. 567, 575-76, 137 P.3d 66 (2006), which allowed the State to appeal an order placing a child in foster care even though the State was not a party to the trial proceedings below.

Similarly to G.A.H., Hyde is the parent of a child whose care, custody, and management remains his fundamental interest. K.N.J., 2011 WL 2076495 at *2. A parent has "a right to appeal" a dependency order. Id. at *4. As J.H.'s parent, Hyde has a legally cognizable interest in his son's welfare and this interest leads him to seek court intervention as a necessary way to protect his child's welfare. CP 211. As Hyde explained, he "wants to make sure that [J.H.] is protected" and believed Ludwig's "current actions" were "directly harming my child." CP 211.

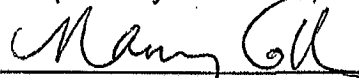
Just as a parent may appeal a dependency order entered against him, or institute dependency proceedings, Hyde has the right to appeal the order dismissing the dependency based on his interest in the welfare of his child. See K.N.J., 2011 WL 2076495 at *4; Schermer, 161 Wn.2d at 941-42. He was a party to the dependency action and had the right to participate in it, present evidence, and object to reunification of the child with his mother based on concerns about the child's safety. J.W.H., 147 Wn.2d at 700-01. His interest does not end in the trial court. A parent's ongoing concern with protecting the safety of his child entitles the parent to appeal from a dependency order. The Court of Appeals ruling refusing to permit Hyde to proceed with his appeal should be reversed and the case remanded so that the appeal may proceed on its merits.

D. CONCLUSION.

Because his fundamental rights were aggrieved by the dependency orders entered by the trial court, Gregory Hyde respectfully requests this Court hold that he has standing to appeal from the trial court's orders dismissing the dependency proceeding that protected his son.

DATED this 11th day of August 2011.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Petitioner

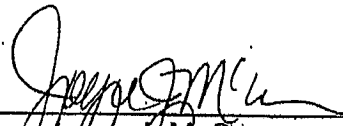
APPENDIX A

No. 28127-2-III

affected a legally protected interest of his, *Polygon Northwest Co. v American National Fire Insurance Co.*, 143 Wn. App. 753, 768, 189 P.3d 777(2008); now, therefore,

IT IS ORDERED, since Mr. Hyde is not an aggrieved party these matters are dismissed. Additionally, Mr. Hyde's other appeals, 28313-5-III, 28314-3-III, 28315-1-III, and 28416-6-III, which all originate from Spokane County Superior Court Cause No. 08-7-02679-8, are hereby consolidated with Appeals No. 28127-2-III and 28226-1-III and dismissed for the same reason.

October 23 , 2009.



Joyce J. McCown
COMMISSIONER

Case # 09-1-06581-7
Sub # 84

Case # 09-1-06581-7
Sub # 85

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE J.H.
MINOR CHILD

GREGORY HYDE,

APPELLANT FATHER.

NO. 84916-1

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 11TH DAY OF AUGUST, 2011, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] CHERYL WOLF, AAG OFFICE OF THE ATTORNEY GENERAL 1116 WEST RIVERSIDE AVENUE SPOKANE, WA 99201-1106	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] SHEILA HUBER OFFICE OF THE ATTORNEY GENERAL PO BOX 40124 OLYMPIA, WA 98504	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] GREGORY HYDE 777665 AIRWAY HEIGHTS CC PO BOX 2049 AIRWAY HEIGHTS, WA 99001	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 11TH DAY OF AUGUST, 2011.

X _____


Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Aug 11, 2011, 4:18 pm
BY RONALD R. CARPENTER
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE J.H.
MINOR CHILD

RECEIVED BY E-MAIL

GREGORY HYDE,

NO. 84916-1

PETITIONER.

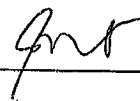
SUPPLEMENTAL DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 11TH DAY OF AUGUST, 2011, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] MIRIAM ROSENBAUM, AAG
OFFICE OF THE ATTORNEY GENERAL
1220 MAIN ST. STE 510
VANCOUVER, WA 98660

(X) U.S. MAIL
() HAND DELIVERY
()

SIGNED IN SEATTLE, WASHINGTON THIS 11TH DAY OF AUGUST, 2011.

x 

CC: CHERYL WOLF, AAG
SHEILA HUBER, AAG
GREGORY HYDE - PETITIONER

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

ORIGINAL

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, August 11, 2011 4:18 PM
To: 'Maria Riley'
Cc: cherylw@atg.wa.gov; miriamr@atg.wa.gov; SheilaH1@ATG.WA.GOV
Subject: RE:

Received 8/11/11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Maria Riley [<mailto:maria@washapp.org>]
Sent: Thursday, August 11, 2011 4:17 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: cherylw@atg.wa.gov; miriamr@atg.wa.gov; SheilaH1@ATG.WA.GOV
Subject:

IN RE J.H.
No. 84916-1

Please accept the attached documents for filing in the above-subject case:

SUPPLEMENTAL BRIEF OF PETITIONER; and

SUPPLEMENTAL DECLARATION OF FILING AND SERVICE

Nancy P. Collins - WSBA 28806
Attorney for Petitioner
Phone: (206) 587-2711
E-mail: nancy@washapp.org

By

Maria Arranza Riley
Staff Paralegal
Washington Appellate Project
Phone: (206) 587-2711
Fax: (206) 587-2710
www.washapp.org